

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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Canadian Pacific Railway Company, <i>et al.</i> – Control –	)	
Dakota, Minnesota & Eastern Railroad Corp., <i>et al</i>	)	Finance Docket No. 35081
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**APPLICANTS' REPLY TO  
MUSCATINE POWER AND WATER'S  
PETITION FOR CLARIFICATION**

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**Dated: November 4, 2008**

Canadian Pacific Railway Company ("CPRC"); Soo Line Holding Company ("SOO Holding"); Dakota, Minnesota & Eastern Railroad Corporation ("DM&E"); and Iowa, Chicago & Eastern Railroad Corporation ("IC&E") (collectively "Applicants") submit this Reply to the Petition for Clarification filed on October 20, 2008 in the above-captioned proceeding by Muscatine Power and Water ("MP&W"). MP&W's Petition is unnecessary and should be denied. The Board does not need to "clarify" that its *September 30 Decision* approving the acquisition of control of DM&E and IC&E by SOO Holding did not interpret the terms of MP&W's 1998 transportation contract with IC&E and 2002 settlement agreement with DM&E and IC&E. The *September 30 Decision* plainly did not purport to interpret those agreements, and there is nothing in the *September 30 Decision* that requires clarification.

MP&W is a municipal electric utility located in Muscatine, IA. MP&W owns and operates the Muscatine Electric Generating Station, a coal-burning power plant at Muscatine, IA, which is served exclusively by IC&E. MP&W burns coal that originates in the Powder River Basin ("PRB"). That coal currently moves by rail via BNSF to Ottumwa, IA, where it is interchanged with the IC&E for delivery to the Muscatine facility. The BNSF/IC&E movement is currently governed by two separate proportional rate contracts; one with BNSF and one with IC&E. The IC&E contract (the "Transportation Contract") was executed on January 1, 1998 and expires in 2012.

When DM&E acquired IC&E in 2003, MP&W filed comments asserting that, if DM&E were to construct a rail line serving the PRB, it might favor its own single-line route to Muscatine and foreclose interline routings with BNSF and UP. MP&W's concerns were addressed by a December 16, 2002 settlement agreement with DM&E/IC&E (the "Settlement Agreement") in which DM&E/IC&E agreed not to take actions to close IC&E interchanges with

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BNSF or UP and to offer, upon request, segment contract rates or proportional common carrier rates via those interchanges to Muscatine Station.

In this proceeding, MP&W submitted comments and requests for conditions premised on the argument that CPR might interpret DM&E/IC&E's obligations under its agreements with MP&W in a manner different than DM&E/IC&E would absent the proposed transaction. Applicants demonstrated that the issues raised by MP&W had no nexus to the proposed transaction. *See Applicants' Brief at 14; Applicants' Rebuttal at 47.* Indeed, by its own admission, MP&W's competitive concerns arose from DM&E's acquisition of IC&E – not CPR's acquisition of DM&E. Moreover, MP&W voluntarily elected to resolve its concerns by entering into its current agreements with DM&E/IC&E. *See Applicants' Brief at 14* (quoting MP&W's statement that “[its] competitive concerns originated with DM&E's acquisition of the Iowa, Chicago & Eastern Railroad . . . in 2003”). Applicants noted that DM&E and IC&E will continue to be parties to, and to be bound by, the terms of the Transportation Contract and the Settlement Agreement. *See Applicants' Rebuttal at 47; Applicants' Brief at 14* (“Following the proposed transaction, DM&E and IC&E will continue to be parties to, and will be bound by the terms of, both of those agreements”). The *September 30 Decision* rejected MP&W's requests for conditions on the grounds that MP&W's “concerns flow from DM&E's acquisition of IC&E in 2003” and that the proposed transaction “is not an event that would alter MP&W's competitive circumstances at all.” *September 30 Decision at 17.*

MP&W's Petition for Clarification MP&W asserts that that the *September 30 Decision* “implies no disagreement” with the notion that the Settlement Agreement will expire at the same time as the Transportation Contract in 2012. Petition at 3. According to MP&W, the Board's references to the Settlement Agreement in the *September 30 Decision* “could be construed by a

court as an interpretation by the Board of the Settlement Agreement.” *Id.* MP&W’s concerns are not well founded.

The Board’s decision to reject MP&W’s proposed conditions is based upon its findings that “this transaction is not an event that would alter MP&W’s competitive circumstances at all” and that the proposed transaction “is unlikely to lead to MP&W suffering competitive harm.” *September 30 Decision* at 17. While the *September 30 Decision* made reference to the existing agreements between MP&W and DM&E/IC&E, the Decision clearly did not purport to interpret the terms of those agreements. To the contrary, the Board simply observed that those agreements “protected [MP&W ] from any perceived effects from a prior merger for several years.” *September 30 Decision* at 17 (emphasis added).

“It is well established that [the Board does] not undertake to interpret or enforce private contracts.” *Union Pac R R. Co —Discontinuance Exemption—in Oklahoma City, OK*, STB Docket No. AB-33 (Sub-No. 239X) (Apr. 13, 2006). Nothing in the *September 30 Decision* suggests that the Board intended to exceed its jurisdiction by interpreting MP&W’s existing agreements with DM&E/IC&E. Nor is there any realistic danger that a court might so construe the *September 30 Decision*. Any future dispute between the parties under those agreements will be decided by the court based upon the language of the agreements—not upon any supposed inferences from the *September 30 Decision*. In short, MP&W’s concerns are misplaced, and there is no need for the Board to “clarify” its *September 30 Decision*.

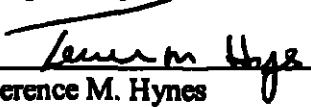
**CONCLUSION**

For the reasons set forth herein, Applicants respectfully request that the Board deny  
MP&W's Petition for Clarification.

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Dated: November 4, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that I have caused the Applicants' Reply to Muscatine Power and Water's Petition for Clarification to be served by first class mail, postage prepaid, this 4th day of November 2008, on all parties of record and the following persons:

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